

(81)
2-10-03
JC

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RANDY YORDY,
Plaintiff

v.

CIVIL ACTION NO. 01-CV-206
(Judge Kane)

SCOTT BROWN, individually and
in his official capacity as
an employee and agent of the
Pennsylvania State Police;
PAUL EVANKO, individually and
in his official capacity as
an employee and agent of the
Pennsylvania State Police;
BERON F. STEAGER, individually
and in his official capacity
as an employee and agent of
the Pennsylvania State Police;
BARRY L. BRINSER, individually
and in his official capacity
as an employee and agent of
the Pennsylvania State Police,
et al.,

Defendants

FILED
HARRISBURG, PA
FEB 7 2003
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Per *[Signature]*
Deputy Clerk

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL
TESTIMONY OF SCOTT ALLEN BROWN

Before: Hon. Yvette Kane, Judge
and a Jury

Date: January 7, 2003

Place: Courtroom No. 4
Federal Building
Harrisburg, Pa.

COUNSEL PRESENT:

SPERO T. LAPPAS, Esquire
For - Plaintiff

GREGORY R. NEUHAUSER, Esquire
For - Defendant

Monica L. Zamiska, RPR
Official Court Reporter

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1 MR. NEUHAUSER: Defendant calls Scott Brown.

2 SCOTT ALLEN BROWN, called as a witness, being duly
3 sworn or affirmed, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. NEUHAUSER:

6 Q Sir, I know we discussed yesterday briefly the incident
7 involving Mr. Yordy, but we didn't get to discuss the
8 entirety and some of the other related issues or questions
9 that I'd like to ask, so let me start by asking you were you
10 on duty February 4, 1999 as a state trooper?

11 A Yes, sir, I was.

12 Q Where were you stationed?

13 A I was stationed out of the Jonestown barracks, which is
14 in Lebanon County, right off of Route 72.

15 Q And in the early evening hours what were your duties
16 and responsibilities at that time?

17 A Well, I was a patrolman. I was assigned by my corporal
18 to work the western part of Lebanon County, which would be
19 the Hanovers, what we call the Hanovers, north, south, east
20 and west.

21 Q When did you first come upon Mr. Yordy that evening?

22 A Well, I was running radar out on Jonestown Road or 22,
23 and being a trooper in the area for so long, there is areas
24 that you make loops on, and you pull out, you get a violator,
25 you pull out, pull them over, and then you work your way back

1 to where you were sitting prior to. Well, part of that was
2 going on a section of T-601, which is what everybody has been
3 referring to as Old Jonestown Road.

4 Q Is that the road that goes past the Thoroughbred Bar
5 that we have heard testimony about?

6 A Yes, sir, it is, and I go to 743, which was previously
7 testified, and work my way back.

8 Q Did you have an occasion to go in the vicinity of the
9 Thoroughbred Bar that evening?

10 A Yes, sir, I did.

11 Q What did you observe?

12 A Well, as I was passing the Thoroughbred Bar, a black
13 pickup truck cut me off and headed towards the Harrisburg
14 area, towards Dauphin County.

15 Q Pulled out in front of you in other words?

16 A Yes, sir, pulled out in front of me so much so I
17 slammed on my brakes. I could not believe he did not see a
18 fully marked state car.

19 Q How far in front of your vehicle was he when he pulled
20 out in front approximately?

21 A Two car lengths.

22 Q What did you do at that point?

23 A I observed his driving, he was all over the road.

24 Q Can you describe how he was all over the road?

25 A Well, he was weaving. He went over the center of the

1 roadway, came back, hit the berm. I think he went over the
2 center about three times and over onto the berm twice.

3 Q What did you do in response to that?

4 A I immediately put on my lights. There was no response
5 to the operator of the vehicle. I hit my siren. I still had
6 no response, did not pull over. A half a mile after I
7 started my lights and siren, we had gone from Lebanon County
8 into Dauphin County, and he finally pulled over once we were
9 through the town of Grantville. So I basically was behind
10 him the whole time with the lights and siren.

11 Q You were present in court when we showed the video of
12 the traffic stop. Correct?

13 A Yes, sir.

14 Q And that video camera was placed on your cruiser. Is
15 that right?

16 A Yes, sir, I'm trained on that.

17 Q Okay, where was the video camera placed on your
18 cruiser? Where in --

19 A Oh, it's mounted -- it's mounted inside. Essentially
20 you have to take the mirror off. They take the mirror off
21 where the mirror is, and they mount it right there where your
22 rear view mirror would be to, so it takes the view, the shot
23 of the center, from the center out.

24 Q Now according to the scene that we saw in the video the
25 camera was slightly off center. Do you recall that?

1 A Yes, sir. That's --

2 Q What is the reason for that?

3 A Well, that's a tactical thing. What we're taught in
4 the academy is you off center the vehicle to the vehicle in
5 front of you to the left. What that does is it protects you
6 from possibly anybody else who comes down, sees the lights,
7 at least they'll hit the cruiser first and give you a chance
8 to jump. That's what I was taught how to do it. Plus
9 it's --

10 Q Your vehicle -- let me interrupt you there -- your
11 vehicle is placed slightly to the left of the vehicle --

12 A Left of center, yes, sir.

13 Q Left of center, and that's to prevent someone from
14 coming -- you have to get out of your vehicle and walk
15 alongside the car along the road, that would prevent someone
16 from clipping you. Is that right?

17 A Yes, it would give you some minimal protection. It's
18 what I was taught in the academy. Also it's a tactical thing
19 where what you do is you turn your wheel and in case you get
20 into say a shootout or something, it makes it so you have
21 some protection that you can get back to your car and the car
22 is off center. If you were straight on, you'd have no
23 protection, but being off center you do.

24 Q Now we saw on the video that you exited your cruiser
25 and went up and spoke to Mr. Yordy in the pickup truck.

1 Right?

2 A Yes, sir.

3 Q Did he cooperate with you in giving you his
4 information?

5 A Absolutely.

6 Q What did you observe of him at that particular time?

7 A I observed that he had bloodshot, glassy eyes. They
8 were a little yellowish in color. He spoke with a slur, had
9 a strong odor of an alcoholic beverage emitting from his
10 person, basically smelled like alcohol or like a beer or
11 something.

12 Q What did you decide to do at that point?

13 A I was going to do a field sobriety test based on his
14 driving, based on his, you know, his manual dexterity, the
15 way he was fumbling, he kept fumbling with his cards. That
16 gave me reason to believe that he was drunk.

17 Q We saw in the video that you took the cards and went
18 back to your car. Correct?

19 A Yes, sir.

20 Q Do you recall that?

21 A Yes, sir.

22 Q What was the reason for that?

23 A That's another tactical thing. You pull back so you
24 can have room to do the field sobriety test.

25 Q Well, before you moved the car back, I mean, you

1 stepped away from Mr. Yordy's pickup truck and went back to
2 your car with his cards. Right?

3 A Uh-huh.

4 Q What were you doing with --

5 A Well, you call it in. You call in his 27 and his 28.
6 What that is is you call in his driver's record and his --
7 the tag number, and you tell the dispatch that, "I have a
8 possible DUI. I'm going to be doing a field sobriety test on
9 the individual," and they run him in the computer.

10 Q And what are they checking for?

11 A Warrants, wants, stuff like that.

12 Q Okay, now you mentioned that you backed up your
13 vehicle, we saw that on the video.

14 A Yes, sir.

15 Q What was the reason for that?

16 A Give room, I needed room to do the field sobriety test.
17 On the walk and turn you go nine steps one way and nine steps
18 back. You need at least two car lengths. It's preferably
19 tactically on a traffic stop to be within one car length, but
20 once you do field sobriety, you have got to back the car up
21 because there is just not enough room between the front of
22 your car and the back of their car.

23 Q What do you recall was the first test that you
24 administered to Mr. Yordy?

25 A I believe it was the one-legged stand.

1 Q And what is he supposed to do in the one-legged stand?

2 A On the one-legged stand just -- I have a routine. I
3 was taught when I first came on the job by --

4 Q What is he supposed to do on the one-legged stand in
5 order for you to assess --

6 A Oh, he -- basically you explain to him, "Sir, I'm going
7 to do a field sobriety test on you. What we're going to do
8 is I want you to listen to me, I want you to watch me. Do
9 not do anything until I tell you to do it." It's part of the
10 test, following directions. "First thing, sir, I'm going to
11 ask you to pick a leg and pick it up off the ground standing
12 at the position of attention. I want you to keep your leg
13 approximately 6 inches off the ground, knee straight. I want
14 you to count 1,001, 1,002, 1,003, 1,004, 1,005 all the way up
15 to -- all the way up to 1,030. If at any time you lose your
16 balance or you put your foot down, please continue the test,
17 bring your foot back up, and then we'll continue the test."

18 Q Did Mr. Yordy comply with your directions?

19 A He tried to start early, which is an indicator. Every
20 time something is done not the way you're supposed to do it
21 or the way you observe it, that's a point.

22 Q Okay.

23 A Once you get so high on the point scale, that would
24 determine what his intox- -- how much you would have for
25 probable cause.

1 Q In your opinion did he pass or fail the one-legged
2 stance?

3 A He failed it miserably.

4 Q Did you administer any other test to him?

5 A He tried to do the walk and turn, he also failed that.
6 Would you like me to explain the walk and turn?

7 Q Well, I think we saw it on the video, but you described
8 that he needs to take nine steps.

9 A Nine steps forward, then what you do is on the ninth
10 step, you keep that foot there, then what you do is you plant
11 your other foot out and you pivot, you make three small turns
12 pivoting until you are back facing in the opposite direction.
13 At that time you walk nine steps heel to toe backwards or
14 back to where I'm -- where I am.

15 Q Could Mr. Yordy perform that test?

16 A No, sir, he could not.

17 Q At that point in time what was your decision or your
18 intention when he failed those two tests?

19 A He was going to be taken to Hershey Medical Center for
20 blood. He was under arrest for DUI. He was going to be
21 taken to the Hershey Medical Center for blood. Once the
22 blood test was over, he was going home. Pennsylvania has a
23 law that says, it's Rule 102 I think under Rules of Criminal
24 Procedure, he goes home, and then he gets charged later on.

25 Q Okay, did you ever inform Mr. Yordy that he was under

1 arrest for DUI?

2 A Absolutely.

3 Q When did you inform him of that?

4 A I told him -- well, you got to understand Miss Smith
5 arrived after the one-legged stand.

6 Q I understand, and you asked her to stand off to the
7 side?

8 A I asked her to step aside, and then I turned my -- I
9 said, "All right, Mr. Yordy, why don't you just stand over
10 there, okay, I'm going to do some field sobriety tests on
11 Miss Smith." And I told him he was under arrest when they
12 were both together. Towards the end there they were both
13 together, and I pulled out my handcuffs, and I had my
14 handcuffs in my hand, and I said, "Mr. Yordy, you're under
15 arrest for DUI."

16 Q What was your concern about Miss Smith being there at
17 that time while you were administering the field sobriety
18 test?

19 A It's dangerous. You can't keep your eyes on two people
20 at once. Backup, my backup was 20 minutes away, so it's not
21 like I had a choice on having somebody there, I didn't.

22 Q Now we saw in the video that Mr. Yordy went to the
23 front of the truck.

24 A Yes, sir.

25 Q I think he testified to retrieve his jacket.

1 A Yes, sir.

2 Q Do you recall that happening?

3 A I allowed him to do that because he was cold, and I
4 wanted to keep the -- I wanted to keep the situation as
5 friendly as possible. I did not want it to go where it went.
6 The idea was I kept him in my sight. I could see him. I
7 mean, you know.

8 Q Now when you -- after you informed Mr. Yordy that he
9 was under arrest, what did you attempt to do?

10 A Handcuff him.

11 Q And can you describe for us how you attempted to
12 handcuff him?

13 A Well, I had had my handcuffs out, and he was standing
14 there with Miss Smith, and I told him he was under arrest,
15 and I turned around to get around him, and that's when she
16 left, she started to leave, and kind of pushed off his chest.
17 Kind of just went like that to him (Indicating) because they
18 were arguing back and forth. And what I did was I put my --

19 Q Let me stop you there, your testimony is that Miss
20 Smith pushed off Mr. Yordy?

21 A Yes, very lightly, very lightly. You know, it was more
22 of a, you know. (Indicating.)

23 Q Okay.

24 A She was doing that to me, too. She kept -- she kept --
25 for some reason she just kept touching me every time she

1 talked. She made me nervous. She kept trying to get to my
2 side and behind me, and I didn't know what her intentions
3 were, so I kept backing up. You can see it on video. I just
4 kept backing up and backing up and changing my position
5 because she would come in where -- she would come in and
6 interfere with me.

7 Q Now you're attempting to place Mr. Yordy in handcuffs?

8 A Yes, sir.

9 Q And you were describing for us how that took place.

10 A Well, she did that and started to leave, and when she
11 started to leave, I went like this. (Indicating.) I had my
12 handcuffs in my right hand. Mr. Yordy saw my handcuffs.

13 Q Did he say anything to you at that point?

14 A No. I said, "Sir, you're under arrest. We're just
15 going for blood. Don't let this escalate." Because they had
16 gotten into an argument. They were arguing.

17 Q Okay.

18 A And when she did that, then she left.

19 Q What happened when you attempted to place the handcuffs
20 on Mr. Yordy?

21 A Well, I grabbed -- I grabbed his wrist because that's
22 where the handcuffs go, and he started pulling away. So I
23 tried to turn his wrists so he couldn't -- so he couldn't
24 pull away.

25 Q And what happened?

1 A I tried to put the handcuff on his wrist.

2 Q Did he say anything to you at that point?

3 A Yes, sir, he did. I didn't know at the time but he
4 said, "I'm not letting you fuckers do this to me again."

5 Q Okay, were you able to put the handcuffs on Mr. Yordy?

6 A I'm sorry, I misquoted, "I'm not letting you fucking
7 staties do this to me again."

8 Q Were you able to put the handcuffs on Mr. Yordy?

9 A No, sir, I was not.

10 Q Why was that?

11 A He kept resisting arrest. You know, I tried to pin him
12 up against the back of the pickup truck, and I tried to --
13 I'm giving verbal commands. In the use of force that we went
14 into before, verbal commands are essential to the use of
15 force.

16 Q What are these verbal commands that you're giving to
17 Mr. Yordy?

18 A Relax, knock it off, don't let this escalate, don't be
19 an asshole, I swore.

20 Q Did he desist?

21 A No, he kept resisting arrest.

22 Q Now we saw in the video at some point that you --

23 A I was trying to wrestle with him --

24 Q I understand.

25 A -- until he punched me.

1 Q When did he punch you?

2 A He punched me at the back of the truck when we were
3 just about to go down, and he essentially -- I don't know if
4 we tripped or he tripped me or what, but we went down, and he
5 --

6 Q And how did you land on the ground?

7 A Me on the bottom, him on the top, and he was in a rage.
8 I mean, he was just --

9 Q Okay, hang on a second, that's what happened off to the
10 side of the truck on the video. Right?

11 A Yes, sir.

12 Q The two of you were on the ground?

13 A Yes, sir.

14 Q Can you describe what was going on at that point in
15 time when you were on the ground?

16 A I, you know, I called him an f'ing asshole. He's --
17 he's growling. The man was out of control. He was growling
18 like an animal at me.

19 Q What did you do in response to his behavior?

20 A I tried to get up, I tried to get off because we were
21 fighting. He's throwing punches, and I was taught by my dad
22 to -- my dad took some boxing when he was in the navy. There
23 is a maneuver called, and he taught it to me, it's called the
24 turtle maneuver. Okay.

25 Q Can you describe what you did in this maneuver?

1 A Well, what you do is they can hit you on the top of the
2 head and they're not going to hurt your head because of this
3 big bone, so you basically go down like this. (Indicating.)
4 You protect your face. So he was punching me in the sides.
5 He was punching me here, (Indicating) you know, and I was
6 protecting my head, and when I got the opportunity, that's
7 when I (Indicating) and broke his nose. And that was the
8 time that I was able to, once I punched him in the nose, I
9 kicked him in the groin and spun him, and we just wrestled
10 around. I mean, we wrestled, we fought.

11 Q And what was your intention, what was your purpose in
12 using the force that you used on Mr. Yordy on the ground?

13 A My God, to survive. The man was out of control. I
14 didn't know -- I couldn't control him. I wanted to get home
15 to my wife and my kids, and that's the only thing I was
16 thinking about.

17 Q Now there came a point in time when, as we saw in the
18 video, where Mr. Yordy got up and went back to the driver's
19 side of his truck. Right?

20 A Yes, sir.

21 Q What did you do when you saw Mr. Yordy get up?

22 A Well, during the wrestling match, fight, I had gotten
23 on top of Mr. Yordy, and we were basically he was facing me,
24 I was facing him, and I had -- I wrestled in high school. I
25 got my legs locked into his legs and sprawled him out. And

1 I'm trying to grab his arms, and the man is a strong man.

2 Q Okay, but what did you do when he started to get up?

3 A Well, he started to get the better of me again, and I
4 was exhausted. At that point I was just totally exhausted.
5 I pushed off of him. I made the decision to push off of him
6 and go down a level to pepper spray. I have seen that pepper
7 spray work on people before. You hit them with the pepper
8 spray, it's over.

9 Q Okay.

10 A It's over.

11 Q When you say you went down a level, what do you mean by
12 that?

13 A Well, the use of force continuum has several levels,
14 going the least amount of force to deadly force, and I had
15 gone from this use of force of telling him you're under
16 arrest, and he escalated it to fisticuffs, which is up here,
17 (Indicating) to basically what I said in the testimony, an
18 ass-kicking contest. That's what it was. He was trying to
19 beat the hell out of me, and I wasn't about to let it happen.

20 Q Okay.

21 A But I decided below the fisticuffs is pepper spray.
22 Usually what happens is you go from verbal command to pepper
23 spray to physical wrestling with the individual or fighting.

24 Q Right.

25 A And then from there you go to the asp baton and then

1 you go -- which is a big metal stick, to use of deadly force,
2 which is your weapon.

3 Q When you took it back to the use of the pepper spray,
4 what was your intention at that point?

5 A To stop, to just stop his action, to stop it and get
6 him handcuffed, take him in and in three hours go home at the
7 end of my shift.

8 Q When you saw him moving towards the driver's side of
9 his pickup truck, we saw in the video that you were spraying
10 him with pepper spray, what was your intent at that point?

11 A To get him to stop and keep him from driving. That's a
12 4,000 pound vehicle.

13 Q We saw he was able to get into the truck despite your
14 pulling him, and what happened at that point?

15 A Um, I tried to keep him out of the truck. There were
16 two dogs in there. They kind of looked like Huskies, but
17 they weren't, they were a smaller breed, but they kind of
18 looked like Huskies. And when I had gotten in to pull him
19 out, one of the dogs grabbed a hold of my jacket, didn't bite
20 me, just grabbed my jacket to let me know it was there.
21 That's when I stepped back and Mr. Yordy got totally in the
22 vehicle. Well, I reached in with my left hand, I had my
23 right hand in there, you know, and I started -- I finished
24 the pepper spray on him as I was turning the key off. I went
25 -- I went between where the steering wheel is and the

1 dashboard, and I went between there and reached up over and
2 shut the vehicle off. I tried to pull the keys out, but the
3 keys wouldn't come. It has one of those -- it's one of the
4 newer cars that has the lock, the key lock. I don't have a
5 Ford, I don't know -- I didn't know how to take it.

6 Q So you couldn't get the key out of the ignition.

7 A I could not get the key out of the ignition. If I had
8 the key out of the ignition, I would have backed off.

9 Q What did Mr. Yordy do at that point?

10 A What's that?

11 Q What did Mr. Yordy do at that point when you turned the
12 car off?

13 A He turned it back on and took off, and he was holding
14 onto my arm. He had my arm pinned inside the vehicle.

15 Q What did you do at that point?

16 A At that point I decided I got to get this vehicle
17 stopped, I wanted to live.

18 Q What did you do?

19 A Pulled my service weapon, I shot out the back tire. I
20 didn't know it at the time, I was told later on, I had made
21 contact with it.

22 Q Did that stop Mr. Yordy's truck?

23 A No, it did not stop him. I then decided to take his
24 life.

25 Q You pulled your weapon up towards Mr. Yordy?

1 A Yes, sir, I did.

2 Q What did he do at that point?

3 A He saw the gun, he looked right at me, and he let go of
4 me.

5 Q And is that the point that you fell off the truck onto
6 the pavement?

7 A Yes, sir, I did.

8 Q Now we saw in the video that there was a period of time
9 where you were on the pavement and not moving. Do you recall
10 that at all?

11 A No, sir. The only -- after I hit my head I don't
12 recall very much. I remember being in the ambulance briefly.
13 I really don't remember the hospital other than the
14 commissioner coming to visit me the next morning, and then I
15 went home.

16 Q Okay, up until the point that you attempted to place
17 Mr. Yordy under arrest had there been any bad words between
18 the two of you, any kind of altercation up until that point?

19 A Before what, before I tried to put handcuffs on him?

20 Q Yes.

21 A No, it was cordial. I had absolutely no reason up
22 until that point to even suspect he would have resisted
23 arrest.

24 Q Okay, so up until that point in time everything was
25 cordial?

1 A Everything was fine.

2 Q Courteous?

3 A Absolutely.

4 Q The point that you had told him that you were placing
5 him under arrest was when he began to resist?

6 A Yes, sir.

7 MR. NEUHAUSER: Nothing further at this time, Your
8 Honor.

9 THE COURT: All right, thank you, Mr. Neuhauser.

10 Jurors we're going to take a short break here for
11 our court reporter and come back at twelve o'clock and then
12 we'll go until our regular lunch hour.

13 Miss Kennedy, would you escort the jury please.

14 (The jury left the courtroom at 11:49 a.m.)

15 THE COURT: We'll be in recess until twelve
16 o'clock.

17 (A recess began at 11:50 a.m. and the case
18 continued at 12:00 p.m. in chambers.)

19 THE COURT: A new issue for you gentlemen, so sit
20 down. I don't have any familiarity with any of the parties
21 in this case, but it occurred to me last night after I went
22 home to check what is on my kitchen table as a pending
23 traffic ticket involving my daughter, and it turns out that
24 one of the defendants has written that ticket, and it is
25 pending. It was interesting to me, I don't -- her father is

1 handling it for me, so I haven't paid much attention to it,
2 but we got a notice in the mail or she got a notice in the
3 mail the other day continuing it, and I called him and said,
4 "Why is this getting continued? How are these things
5 happening?" He said, "Well, I'll look at it. It's usually
6 the officer continues it."

7 MR. NEUHAUSER: You called who?

8 THE COURT: I beg your pardon?

9 MR. NEUHAUSER: You called who?

10 THE COURT: The child's father --

11 MR. NEUHAUSER: Okay.

12 THE COURT: -- who has done some defense work, so
13 he's handling it.

14 MR. NEUHAUSER: I understand.

15 THE COURT: But, in any event, when I looked at it
16 last night, it sort of came together that the case got
17 continued by one of the officers because he's here, so I
18 wanted you to know about that.

19 MR. LAPPAS: Which officer was it?

20 THE COURT: It's Officer Steager.

21 Now, I don't expect you to answer now because it's
22 not fair to put you in that position, I think when there is
23 -- the law requires that the judge disclose any information
24 that could lead to -- lead a reasonable person to believe
25 that he or she is biased or prejudiced in the case and then

1 give the parties an opportunity to request recusal of the
2 judge and to do it without the judge knowing which one has
3 requested that. So I'll give you an opportunity to do that.

4 In the normal course these things occur not in the
5 middle of trial, and we --

6 MR. NEUHAUSER: This is a first.

7 THE COURT: Actually this is the second. We had
8 been trying a case a few weeks ago involving a lawyer who's
9 now associated with a lawyer who's suing me in federal court,
10 and I recuse on all of his cases, but I didn't know until we
11 were in the middle of picking a jury of that association. So
12 I gave the lawyers an opportunity to discreetly exercise
13 their options, and one of them did opt to ask that I be
14 removed from the case. Conflict or potential conflict was
15 not waived.

16 So just to keep things moving, what I will do here
17 is go ahead and finish up with Trooper Brown, and then I will
18 -- Miss Kennedy will give you a written disqualification form
19 which you will execute and return to the clerk's office. She
20 does not even see them, only Gary Hollinger, the deputy
21 clerk, receives those, and then we'll know where we are. But
22 I wanted you to know about this.

23 MR. NEUHAUSER: Thank you.

24 MR. LAPPAS: Well, good luck to your daughter on
25 the traffic violation.

1 THE COURT: This is a first in our family. I got
2 one the other day for an expired inspection sticker, but this
3 is our first speeding violation, so --

4 MR. LAPPAS: Okay, very well.

5 MR. NEUHAUSER: Thank you, Your Honor.

6 (The discussion in chambers concluded at 12:04 p.m.
7 and the case continued in the courtroom at 12:08 p.m.)

8 THE COURT: Mr. Lappas.

9 MR. LAPPAS: Thank you, Your Honor.

10 (Scott Allen Brown continued as the witness.)

11 CROSS EXAMINATION

12 BY MR. LAPPAS:

13 Q Mr. Brown, is there any medical or psychiatric reason
14 why you feel you're not able to testify or testify truthfully
15 today?

16 A Not that I know of.

17 Q Would you acknowledge that as of February 4, 1999 you
18 had a violent temper?

19 A Since when?

20 Q On February 4, 1999 that you had a violent temper?

21 A No.

22 Q That's your testimony?

23 A Yes, sir.

24 Q You have filed a -- you contend that as a result of
25 hitting your head on February 4, 1999 you suffered mental

1 injuries. Correct?

2 A Yes, sir.

3 Q You told Mr. Neuhauser yesterday that it was your
4 belief that you had a closed head injury. Correct?

5 A Yes, sir.

6 Q And is it your belief that this closed head injury
7 causes violent mood swings in your behavior?

8 A Not violent, sir, but mood swings, yes.

9 Q Mood swings, and it also affects your memory, does it
10 not?

11 A Yes, sir, it does.

12 Q And because of these closed head injuries that you
13 claim to have sustained, you are taking various kinds of
14 medication. Correct?

15 A Yes, sir, I am.

16 Q Do any of those medications interfere with your ability
17 to either control yourself or to testify properly?

18 A If I understand your question correctly, it's no.

19 Q Well, I'll break it down, do any of these medications
20 that you are taking now prevent you from being able to
21 control yourself, not -- specifically your anger?

22 A No.

23 Q Do any of these medications prevent you from being able
24 to testify appropriately?

25 A No.

1 Q Were you taking any kind of psychiatric medication on
2 February 4, 1999?

3 A No.

4 Q That is not true, is it?

5 A No, it's not. It is true I don't --

6 Q It is true?

7 A I was not taking any medication at the time.

8 Q All right, what I would like you to do is open the
9 binder that contains your medical records. I'm going to give
10 you the number in a moment. It is Binder No. 3, Plaintiff's
11 Binder No. 3, and I want you to turn to Exhibit Tab 13. Have
12 you found that?

13 A Yes, sir.

14 Q And do you recognize that these are documents which
15 purport to be your medical records from an admission at the
16 Hershey Medical Center?

17 A Yes, sir, they do.

18 MR. LAPPAS: Your Honor, may I approach the witness
19 to point to a particular page?

20 THE COURT: You may.

21 MR. LAPPAS: I apologize, Your Honor, these should
22 have been numbered.

23 BY MR. LAPPAS:

24 Q Mr. Brown, I'm going to show it to you in another
25 binder in which I can easily find it, and then I will find it

1 for you in this one. When you went to the hospital, you
2 spoke to nurses as you were being admitted. Do you remember
3 that?

4 A I don't remember anything about the hospital, sir.

5 MR. NEUHAUSER: Excuse me, Your Honor, may I have a
6 reference?

7 MR. LAPPAS: Oh, I'm sorry, I apologize.

8 (Mr. Lappas and Mr. Neuhauser spoke off the
9 record.)

10 BY MR. LAPPAS:

11 Q Do you remember telling the people at the Hershey
12 Medical Center on February 4, 1999 that you were taking
13 Prozac and had taken it on February 4, 1999?

14 A Sorry, I don't recall that. I don't recall anything
15 that happened at the hospital.

16 Q Is it true that you were taking Prozac on February 4,
17 1999?

18 A I don't believe so. I have taken it in the past, but I
19 don't believe it was during that time frame. My wife would
20 be better to tell you.

21 Q Well, in light of your testimony a moment ago that you
22 were not taking any sort of psychiatric medication --

23 A To my knowledge. I took it in the past for depression.

24 Q I understand. I'm going to show you a nursing note,
25 admission nursing assessment, --

1 A Yes, sir.

2 Q -- for February 4, 1999, time 23:50 hours, Scott Brown.

3 A Where do you see that?

4 Q (Indicating.)

5 A Oh, up here.

6 Q Okay, it indicates Prozac dosage 30 milligrams.

7 Frequency OD and then last taken 2-4-99. Do you see that?

8 A Yes, sir, I do see that.

9 Q Do you remember giving that information to the people
10 at the hospital?

11 A No, sir. I told you again, I don't remember anything
12 from the hospital.

13 Q And you don't remember whether or not you were in fact
14 taking Prozac or any other psychiatric medication on February
15 4, 1999?

16 A I do not recall, I'd have to refer to my wife.

17 Q From 1996 into 1999 were you being treated for any
18 anger management problems?

19 A No, depression due to marital problems and my daughter.
20 My daughter was born with a disability, I had a hard time
21 dealing with that.

22 Q I'm specifically asking you about anger management
23 problems. Were you seeing a psychologist for anger
24 management problems?

25 A I was seeing a psychologist, yes, but not for anger.

1 Q And that was a Dr. Walker?

2 A Yes, sir.

3 Q And when you saw Dr. Walker, did you frequently tell
4 him that you were having problems with handling your anger
5 because of work related matters?

6 A No, not having problems handling my anger. I had
7 depression due to my job.

8 Q So you would deny that between '96 and '99 you reported
9 to Dr. Walker that you were having anger related problems due
10 to work matters?

11 A No, not to my knowledge. I saw him again for marital
12 situations.

13 Q Specifically on December 2, 1997, for example, did you
14 tell Dr. Walker that you were angry because of some action at
15 work?

16 MR. NEUHAUSER: Your Honor, I'm going to object at
17 this point, relevance, two years before the incident.

18 THE COURT: Sustained.

19 MR. LAPPAS: I'm sorry, did you say sustained?

20 THE COURT: Sustained.

21 BY MR. LAPPAS:

22 Q Well, then closer in time to the incident, closer in
23 time to February 4, 1999, did you consult with Dr. Walker or
24 any other practitioner relative to problems with your anger
25 management?

1 A No, sir, at that point I had stopped seeing Dr. Walker
2 due to his affiliation with the state police.

3 Q You continued to see him until February 12, 1999, did
4 you not?

5 A I don't recall the dates.

6 Q With respect to the incidents of February 4, 1999 I
7 want to direct your attention to that part of your testimony
8 that deals with what happened when you went to the side of
9 the pickup truck after Mr. Yordy had reentered and after you
10 sprayed him with pepper spray. Do you remember that part of
11 your testimony?

12 A Yes, sir.

13 Q Now you stated that you reached into the truck, if I
14 understand you correctly, you reached into the truck to pull
15 him out and your sleeve was nipped at by one or more dogs?

16 A Yes, sir.

17 Q And where were these dogs?

18 A In the cab.

19 Q Does that truck have a super cab with a front and back
20 seat?

21 A No, it has, if I remember correctly, just a regular
22 cab.

23 Q And the ignition would be on the right side, the
24 ignition key lock would be on the right side of the steering
25 column?

1 A Yes, sir.

2 Q All right, so your testimony is you reached in with one
3 of your hands to pull Mr. Yordy out and was -- you were
4 nipped at by these dogs. Is that correct?

5 A No, sir, I think you have that backwards. First, we
6 had wrestled at the side. I was pulling his jacket. He got
7 in, I -- that's when I tried to grab him out and the dog
8 nipped me.

9 Q All right, let's --

10 A I then retreated, and he got in, and that's when I
11 reached in through the window.

12 Q Let's talk about the biting dogs again.

13 A Yes.

14 Q At what time were you -- what were you doing when the
15 dogs bit you?

16 A Wrestling with Mr. Yordy, trying to pull him out of the
17 cab.

18 Q So he was in the cab, you reached in to pull him out,
19 and the dogs bit you?

20 A We were both kind of half in the cab, I mean, we were
21 right at the door.

22 Q The dogs never came out of the truck?

23 A No.

24 Q And there were two of them --

25 A If I recall correctly, yes.

1 Q -- on the front seat of a regular pickup truck, and the
2 pickup truck had no back seat?

3 A Yes, sir. They were small dogs. Like I had testified,
4 they were like Huskies but they weren't, they were small.

5 Q And then you reached in with your left hand to reach
6 for the key, --

7 A Yes, sir.

8 Q -- ignition key? How did you know the key was still
9 there?

10 A I just assumed it. I saw -- actually, no, I'm sorry, I
11 take that back.

12 Q I don't want you to assume. I want you to tell me how
13 you knew the key was there.

14 A He had tried to start it, and started it, and the
15 vehicle jumped, and that's when I shut it off and tried to
16 pull it out.

17 Q So your testimony is that he had started -- the car was
18 turned off, you're standing by the side of the car, he starts
19 it up, and only then did you reach in for the key?

20 A No, simultaneously as he was trying to start it. The
21 keys were in the ignition.

22 Q My question is how did you know that?

23 A I don't recall, I just know they were.

24 Q Well, you hadn't seen them.

25 A I just know they were.

1 Q You hadn't seen them there, had you?

2 A I don't recall, I just remember knowing that they were
3 there.

4 Q But you can't tell us how you knew that?

5 A Possibly I saw them, I don't recall.

6 Q Have you ever -- in all of the testimony, you said
7 yesterday you have testified over the years in very many
8 cases, have you ever testified to your knowledge that you saw
9 the keys in the ignition?

10 A I don't recall.

11 Q Do you remember telling the nurse the information that
12 we elicited from Trooper Caruso that your true reason in
13 reaching into the Yordy vehicle was to grab or restrain Mr.
14 Yordy?

15 A That's part of what I was doing, sir.

16 Q Well, but --

17 A I was trying to restrain him and keep him from driving
18 away.

19 Q Well, but were you trying -- you had your left hand on
20 the keys and your right hand on your gun.

21 A No, I had my right hand on Mr. Yordy.

22 Q You had your right hand on Mr. Yordy?

23 A Well, first I had it on the pepper spray, and when that
24 -- when that exhausted, that's when I threw it down.

25 Q Right.

1 A And I came back in to hold on him,--

2 Q Uh-huh.

3 A -- and that's -- at that point when he got started
4 again is when I went for my weapon. But he had started it
5 for the second time when I went for my weapon.

6 Q I see, so it's your testimony that instead of -- as he
7 was grabbing at you to pull you down the road, instead of
8 grabbing your right hand which is right on him --

9 A No, it was on my gun at that point.

10 Q Well, you said you had your right hand on him and your
11 left hand on the keys.

12 A Yes.

13 Q Instead of grabbing your right hand, which is actually
14 right on him, he decided to reach around the steering wheel,
15 grab at your left hand. Is that your testimony?

16 A He didn't reach around, no, that's not my testimony,
17 sir. What my testimony is is I had started to reach for my
18 weapon when I saw that he -- it started. It was a split
19 second. I saw him start the car. I knew he was going to
20 start it again.

21 Q You knew he was --

22 A He had -- as he was --

23 Q You knew he was going to start it. How could you know
24 he was going to start it?

25 A Because I observed his right hand going back for the

1 keys.

2 Q You testified you didn't know the keys were there until
3 his hand moved towards the ignition switch.

4 A That's not what I testified to, sir, you need to go to
5 the court reporter. What I testified to was that he had
6 started the vehicle already once. You can assume that the
7 keys were in it if he had started the vehicle once.

8 Q He started the vehicle once and then --

9 A And I shut off the keys, I shut off the ignition. With
10 the key in the ignition he had started it. The key was in
11 the ignition when I shut it off.

12 Q So the reason the keys --

13 A I tried to pull --

14 Q Go on.

15 A I tried to pull the keys out, the keys were locked in
16 the ignition. I could not pull them out.

17 Q The reason you knew the keys were in the ignition was
18 because you had seen him start the car once before?

19 A Yes, that's when I reached in.

20 Q I see.

21 A You can review the videotape if you watch it.

22 Q You don't honestly believe that the videotape shows you
23 reaching for keys to the car.

24 A No, I think the videotape shows the transition. It
25 shows the time line that you're trying to --

1 Q You --

2 A -- that you're trying to put forth.

3 Q Do you believe that the videotape shows your hand in
4 the car reaching for the keys?

5 A Not in the car, it shows where my position was at the
6 time.

7 Q So --

8 A It shows me throwing the pepper spray down.

9 Q -- your testimony is that you reached your left hand in
10 the car --

11 A Uh-huh.

12 Q -- between the steering wheel and the dashboard.
13 Correct?

14 A Yes, sir.

15 Q Then down over the steering column and back to where
16 the ignition switch is. Is that correct?

17 A It's more like just over, like that. (Indicating.)

18 Q Okay, that's your left hand. Your right hand is
19 restraining Mr. Yordy?

20 A I had him by the jacket I believe.

21 Q And then when you saw him --

22 A But this is through the window, sir, this is through
23 the window.

24 Q Oh, I know, the door is closed. When you saw him turn
25 the ignition, you released your hold on him and went for the

1 gun. Is that your testimony?

2 A The second time he started the vehicle, not the first
3 time.

4 Q You're reaching over the steering column.

5 A Uh-huh.

6 Q You're reaching for the keys.

7 A Yes, sir.

8 Q In fact you actually had your hands on the keys because
9 you knew that they were locked in the ignition lock.

10 A Yes, sir.

11 Q You have your right hand on Mr. Yordy.

12 A I had the pepper spray at first, then dropped the
13 pepper spray, grabbed him, grabbed him.

14 Q Okay, and then Mr. Yordy turns the ignition key from
15 off to on. Right?

16 A For the first or second time, sir?

17 Q At the time that you had him by the jacket, at the time
18 that you reached in -- your testimony, as I understand it, is
19 that you reached in because you knew the keys were there.
20 The reason you knew the keys were there was because he had
21 already turned the car on the first time.

22 A Yes, sir, so now you're talking about the second time.

23 Q You grab him by the jacket?

24 A Yes, sir.

25 Q One hand on the ignition?

1 A Because I had shut it off.

2 Q One hand on the jacket. Right?

3 A Yes, sir.

4 Q Did you say you shut it off?

5 A The first time he started it and the vehicle jumped,
6 yes, I shut the vehicle off. That's why it jumped.

7 Q So then did he put his hand -- you had a hold of the
8 keys in order to shut them off?

9 A Yes.

10 Q Because he put his hand on top of yours to reignite it?

11 A Yes, sir.

12 Q He did?

13 A And when he started it for the second time, he had it
14 on, and I -- that's when I tried to get out, and I went for
15 my weapon.

16 Q You released his coat?

17 A I released his coat. He had -- he had the ignition. I
18 reached for my weapon and tried to pull my arm out, and
19 that's when he pinned it with his left arm. (Indicating.)

20 Q Which arm did he pin, you're demonstrating your left
21 arm.

22 A Yes, sir. With his left arm, (Indicating) pinned it
23 right on the armrest of the door and pinned it there and took
24 off. And at the same time, at the same time --

25 Q Excuse me, we're getting away from my question.

1 A Okay.

2 Q At one point you've got your left hand on the ignition
3 switch, you have got your right hand on Mr. Yordy. Right?

4 A Yes, sir.

5 Q What were the dogs doing?

6 A I don't know.

7 Q You have two dogs in the truck that nip at you because
8 you come to the door, and your testimony is you're leaning
9 with both arms and hands in the truck, your left hand way
10 past the steering column on the ignition, your right hand
11 grabbing their master, and these dogs are just doing nothing.
12 Is that your testimony?

13 A That's not my testimony.

14 Q Okay.

15 A I'm sure the dogs were doing something, sir, but I was
16 more interested in what was going on --

17 Q Were the dogs attacking you was the question.

18 A -- with Mr. Yordy. What's that?

19 Q Were the dogs attacking you at this point is the
20 question.

21 A I don't recall.

22 Q You don't recall?

23 A No, sir, I don't recall. I don't think they were. I
24 don't think they were.

25 Q Is the reason you don't --

1 A Mr. Yordy was sitting in the seat.

2 Q Is the reason you don't recall because of the memory
3 problems you have been having?

4 A No, sir, I was concentrating on Mr. Yordy and making
5 sure I got Mr. Yordy under arrest.

6 Q You were concentrating on Mr. Yordy to the extent that
7 you would not remember whether or not you were attacked by
8 two dogs?

9 A I was wearing a heavy jacket. All I remember is that
10 the dogs were small, they were just like Huskies but they
11 were smaller, and only once did I realize that they were even
12 in there when they were rip -- they had grabbed a hold of my
13 jacket and tugged at my jacket, that's why I retreated.

14 Q You started to say they ripped your jacket. Isn't that
15 what they did the first time?

16 A I don't recall.

17 Q Well, because you don't recall I'm going to ask you to
18 turn to a statement that you made to a Corporal Mrgich and a
19 Trooper -- I believe his name is Trooper Oberdorf. Do you
20 remember speaking to those gentlemen on March 23, 1999?

21 A Internal affairs, is that what you're talking about?

22 Q I didn't ask you to identify their work assignment. I
23 asked you if you remember speaking to them on that date.

24 A I remember speaking to two individuals, state policemen
25 who were internal affairs, which I assume you were speaking

1 of. I don't know their -- I don't recall their names.

2 Q All right, look at Yordy' Binder No. 3, Exhibit 11.
3 Have you found that?

4 A Yes, sir.

5 Q Exhibit 11 has a number of attachments to it. They are
6 numbered. I want you to turn to page 87 of Exhibit 11, which
7 is part of attachment No. 10.

8 A Okay, wait a minute, you want me to go to a different
9 attachment now?

10 MR. LAPPAS: May I, Your Honor?

11 THE COURT: Please.

12 THE WITNESS: You want me to go back to attachment
13 11?

14 THE COURT: He will assist you.

15 THE WITNESS: Thank you.

16 BY MR. LAPPAS:

17 Q Now if you need to turn back a few pages, please do. I
18 want you to acquaint yourself with this exhibit and determine
19 that this is a transcript of a statement which you gave to
20 Corporal Robert Mrgich and Trooper Jerry Oberdorf on March
21 23, 1999.

22 A Yes, sir, it is.

23 Q All right, and again without saying why you spoke to
24 them, would you agree that the subject of conversation was
25 the events that took place on February 4, 1999 between you

1 and Mr. Yordy?

2 A Yes, sir. Yes, sir.

3 Q All right, now turn to page -- it's page 4 of this
4 statement. There is also an inked number at the bottom that
5 says 000087.

6 A Uh-huh.

7 Q Have you found that page?

8 A Yes, sir, I did.

9 Q All right, now almost exactly halfway down the page
10 there is a line that starts with the word uh, u-h. Please
11 find that.

12 A Have it.

13 Q This statement reports that you said -- we're going to
14 start about halfway through this line: "I remember grabbing
15 him, I remember the dog coming at me and actually grabbing my
16 uh, my jacket and uh, I should have brought my jacket but
17 there is a hole in my jacket ..." Do you see that?

18 A Yes, sir.

19 Q All right, so does that refresh your recollection as to
20 whether this dog tore your jacket?

21 A Yes, sir.

22 Q It did tear your jacket?

23 A It put a hole in it.

24 Q With its teeth?

25 A Yes, it was a small hole.

1 Q So this dog that put a hole, large or small, in your
2 jacket by biting at you a moment ago is now doing nothing
3 that you can remember while you have both hands in the car,
4 one on the ignition and one on its master. Is that really
5 the testimony you'd like to leave with this jury today?

6 A Yes, sir, I was fighting. There was a lot going on.

7 Q Right, do you know an individual by the name of
8 Lieutenant Francis H. Grolemond?

9 A No.

10 Q You do not know an individual by the name of --

11 A Maybe by sight but I don't recall the name Francis.
12 If I knew what he looked like, I might know him. There is
13 over 4,000 of us.

14 MR. LAPPAS: Your Honor, this relates to the matter
15 which we discussed with the Court earlier and requires me to
16 distribute Exhibit Binder 4.

17 THE COURT: Thank you.

18 THE WITNESS: Thank you.

19 BY MR. LAPPAS:

20 Q I want you to turn to Exhibit 23 in this exhibit
21 binder, review it silently and tell me if this refreshes your
22 recollection as to whether you know Lieutenant Francis H.
23 Grolemond, Jr. from Troop "S", Milesburg of the Pennsylvania
24 State Police.

25 A Oh, yes, it did. It does, it does refresh my memory.

1 This was prior to the interstate being dissolved. At the
2 time I was a patrolman on the interstate in York.

3 Q Your testimony is --

4 A That troop is no longer around.

5 Q You did not immediately recognize the name Lieutenant
6 Grolemond because of the reorganization of Troop "S"?

7 A Yes, sir. Yes, sir, he was the last commander of Troop
8 "S".

9 Q I see, and one of his duties, I take it, was to speak
10 to you on May 8, 1997 relative to an investigation that he
11 was conducting. Correct?

12 A Yes, sir.

13 Q And on that -- during that investigation he asked you
14 to provide certain information concerning a matter that he
15 was investigating, a matter that involved you. Correct?

16 A He wasn't investigating, sir. He was the disciplinary.

17 Q You could call it an investigation, an inquiry, an
18 examination, he was doing something which required him to
19 obtain information from you involving a matter that related
20 to you. Correct?

21 A No, sir.

22 Q No.

23 A He was the basic -- he was my commanding officer. It
24 wasn't his job to do the investigation. I believe, I'm not
25 really sure who did this investigation, but I know it wasn't

1 him. He's -- he was the commanding officer. It wasn't his
2 job to do the investigating.

3 Q Still with Exhibit 23, is there an officer listed in
4 block 3, in the top right-hand corner, an officer who
5 indicated he was, quoting here, the investigating officer?

6 A Yes, Lieutenant Francis Grolemond, Jr.

7 Q All right, so let's talk about investigating officer
8 Lieutenant Francis Grolemond. Isn't it true that during the
9 course of his investigation involving an incident relating to
10 you --

11 A Uh-huh.

12 Q -- you provided him with intentionally false
13 information?

14 A Not that I recall.

15 Q You do not recall telling him, quoting from this
16 report --

17 A May I read it?

18 Q Oh, I thought you had. You may certainly read this
19 entire report, yes, sir.

20 A Thank you. (Witness reading.) I now remember this
21 incident.

22 Q Do you now remember that during the course of
23 Lieutenant Grolemond's investigation of you and your conduct
24 you provided him, intentionally provided him, you lied to
25 him, you intentionally gave him false information?

1 A Yes, sir, I did.

2 Q And do you now remember that you stated to Lieutenant
3 Grolemund that the reason you lied about an investigation
4 into your affairs was to avoid getting into trouble?

5 A I don't recall using that language, no.

6 Q Do you remember that that is the reason you lied to
7 him?

8 A I lied to him because I didn't want to get disciplined
9 for swearing. I used foul language.

10 Q You lied to him to avoid being disciplined?

11 A Yes, sir.

12 Q Is that what you just said?

13 A Yes, sir.

14 Q Do you know whether or not the Pennsylvania State
15 Police regulations allow you to lie to senior officers --

16 A No.

17 Q -- if you choose to do so?

18 A You're not allowed to, and I was disciplined for it.

19 Q I want you to look in that same binder, Binder No. 4,
20 at Exhibit 26. Now I do not want you to identify this, I
21 just want you to look at it. I don't want you to say out
22 loud what it is at this point.

23 A Okay.

24 Q I would just like you to look at it and tell me if you
25 know what it is.

1 A Please give me a second to read it.

2 Q Certainly.

3 A (Witness reading.) Yes, sir, it's relative to what you
4 just told me before, the previous thing we talked about.

5 Q The previous matter that we discussed concerning your
6 lie to Lieutenant Grolemond?

7 A Where I fibbed, yes.

8 Q Fibbed?

9 A Yes, that's what it was, omission, fib. It wasn't an
10 out and out lie, it was an omission.

11 Q It was an omission?

12 A It was an omission, I didn't tell him, and I should
13 have said that I called the person a mother fucker.

14 Q Lieutenant Grolemond states that you told him that you
15 intentionally and deliberately lied in order to stay out of
16 trouble. Is that true or not?

17 A That's not true, I omitted telling him the truth.

18 Q I see. Well, now that you have examined Exhibit No.
19 26, you recognize it, you know what it is?

20 A Yes, sir, I do, sir.

21 Q All right, do you remember that you gave a sworn
22 deposition in this case, testimony under oath, at my office
23 on January 18, 2002?

24 A I do remember us meeting, yes. I don't recall the
25 exact date but --

1 Q Do you remember that we did more than meet, that you
2 were asked questions under oath and you gave sworn testimony?

3 A Oh, yeah. Yes, sir.

4 Q And do you remember that at the time of that deposition
5 we discussed the matters contained in Exhibit 26?

6 A I believe we did touch on that, yes, sir.

7 Q Yes, now I want you to look at Exhibit Binder No. 1.
8 Please keep that one open to Exhibit 26.

9 A This one right here.

10 Q No. 4, please keep that one open.

11 A Okay.

12 Q Then open Binder No. 1 to Exhibit 1.

13 A Okay.

14 Q Do you recognize that as a transcript of your sworn
15 testimony on the day of January 18, 2002?

16 A That's what it does look like, sir, yes.

17 Q Turn to page 19.

18 A Yes, sir.

19 Q At the top of page 19 starting with the word however,
20 read that paragraph to yourself.

21 A Just the top one?

22 Q Yeah.

23 A (Witness reading.) Yes, sir.

24 Q All right, will you agree that at that point at your
25 deposition that you were testifying about the decision that I

1 directed your attention to a moment ago, Exhibit 26?

2 A Oh, no.

3 Q Oh, no?

4 A No, sir.

5 Q You will not agree to that?

6 A No, I will not agree to that. There was three
7 arbitrations, and --

8 Q Turn back --

9 A -- I was referring to the other one, the heart and lung
10 issue.

11 Q Excuse me, I want you to turn back to page 17 where we
12 start talking about what you have now said to be an
13 arbitration decision.

14 A Seventeen.

15 Q Now again I don't want you to give any details about
16 what the incident involved or --

17 A Okay, okay.

18 Q -- what was involved, but I want you to look at page 17
19 or really at any other page of this deposition transcript
20 that you need to in order to identify the matter that we were
21 discussing at page 19.

22 A I'm fully aware of the incident in which we talked.

23 Q All right, starting about two-thirds of the -- well,
24 actually on line 20 of page 17 there is an individual's name.
25 Without telling me what that name is, does that help you

1 recognize --

2 A Absolutely, sir, but there were three arbitrations that
3 arose from this one incident.

4 Q Turn to --

5 A You're twisting it around.

6 Q Am I?

7 A Yes, sir, I was referring to the heart and lung issue,
8 not this one right here.

9 Q Heart and lung is a kind of workers' compensation
10 program that covers Pennsylvania State Police troopers, is
11 that correct, and other --

12 A Yes, sir, when we get hurt --

13 Q -- and other police officers?

14 A -- on duty.

15 Q And heart and lung is something that applies without
16 regard to who's at fault for a particular incident. Correct?

17 A I don't know, I'm not a lawyer.

18 MR. LAPPAS: Your Honor, it actually might take
19 some time to go through this with the witness, would you like
20 to break for lunch now? May I ask that the witness over the
21 lunch hour examine his deposition testimony and the exhibit
22 that I have referred him to to facilitate the continued cross
23 examination.

24 THE COURT: I invite you to do that.

25 THE WITNESS: Yes, ma'am, I will.

1 THE COURT: Thank you.

2 All right, jurors, we're going to break now for
3 lunch. I'm sure you are all getting hungry, I know our court
4 reporter is. We'll be back at two o'clock.

5 Miss Kennedy, would you escort the jury please.

6 (The jury left the courtroom at 12:50 p.m.)

7 THE COURT: Mr. Lappas, if you will stay close by,
8 I have a document to give to counsel --

9 MR. LAPPAS: Absolutely, Your Honor, I will not
10 leave the courtroom.

11 THE COURT: -- forthcoming.

12 We'll be in recess.

13 (A recess began at 12:51 p.m. and the case
14 continued at 2:10 p.m.)

15 THE COURT: Mr. Lappas.

16 MR. LAPPAS: Thank you, Your Honor.

17 (Scott Allen Brown continued as the witness on
18 cross examination.)

19 BY MR. LAPPAS:

20 Q Mr. Brown, do you still have those two exhibits
21 available to you?

22 A Yes, sir, I do.

23 Q All right, I want you to turn to Exhibit 25.

24 A Which book?

25 Q I'm sorry, 26, it's in Binder 4.

1 A Okay, I'm there.

2 Q And I want you to read to yourself silently the second
3 to the last paragraph on page 4 of that exhibit starting --
4 it starts with the word on April 30.

5 A Got it. (Witness reading.) Yes, sir.

6 Q All right, does that help you identify the issues that
7 this particular report dealt with?

8 A Yeah, I do.

9 Q All right, and you're familiar with those issues.
10 Correct?

11 A Yes, sir.

12 Q And with the incident that was involved?

13 A Oh, yeah.

14 Q All right, now I'm going to ask you to turn to Exhibit
15 1, which is your deposition. It's in Binder No. 1.

16 A Okay.

17 Q And turn to page 18 of that exhibit, --

18 A Have it.

19 Q -- line 15. The question is -- starts with the word
20 so. I want you to read that question and answer to yourself
21 silently.

22 A Yes, sir, got it.

23 Q All right, now that being the case, will you now
24 acknowledge that both of these exhibits deal with the same
25 incident and the same matter?

1 A I already said that, but it's not -- you wanted me to
2 say that I was referring to that in my testimony. I was not
3 referring to that, I was referring to the other arbitration.

4 Q All right.

5 A But they are -- I understand what you just said
6 connects, but it --

7 Q Both deal generally with the subject involving 10 days.
8 Correct?

9 A Yes, sir.

10 Q All right, both deal with a decision that someone made.
11 Correct?

12 A No, this one deals with a decision, that one doesn't,
13 that was my testimony. One is my testimony; one is a
14 decision.

15 Q Do you acknowledge that in your testimony in Exhibit 1,
16 specifically at pages 18 and 19, you are attempting to
17 describe the decision that appears as Exhibit 26?

18 A No, I was not.

19 Q You were not.

20 A If you look in here, it says he felt, his findings, he
21 found, and if you look at the beginning, the name of the
22 arbitrator was a woman.

23 Q I know that.

24 A If I was referring to this specific decision, would it
25 not have said she, her? I was not referring to this

1 decision.

2 Q So your testimony is there is a separate decision that
3 deals with this same issue, --

4 A Yes.

5 Q -- that deals with the same 10 day matter --

6 A There is three of them.

7 Q Let me finish please. There is another decision that
8 deals with the same matter, with the same 10 day issue that
9 was decided by a male arbitrator?

10 A Yes, it was all the same subject, all the same
11 incident, it was just different decisions for different
12 things. One was for heart and lung, one was for this and the
13 third one was a county court case. I can't remember, that
14 was about the attorney.

15 Q Did the heart and lung issue have anything to do with a
16 10 day time period?

17 A The heart and lung had to do with me being hurt.

18 Q Did it have anything to do with a 10 day time period?

19 A No, I don't believe so.

20 Q All right.

21 A If I'm on the same page as you are, I'm trying to
22 answer you as truthfully as I can, and you got me confused.
23 You got me going to three different things here. I'm just
24 making sure I gave you the right answer.

25 Q Did the heart and lung case have anything to do with a

1 10 day time period?

2 A No.

3 Q All right, the decision of this female arbitrator that
4 you told us about does deal with a 10 day time period.
5 Correct?

6 A Yes, it does.

7 Q Your testimony at page 18 and 19 of your deposition
8 deals with a 10 day time period. Correct?

9 A Yes, it does.

10 Q Did the county court case that you referred to have
11 anything to do with a 10 day time period?

12 A Yes, it did.

13 Q It did?

14 A Yes, it did.

15 Q Was that handled by an arbitrator in Dauphin County
16 Court?

17 A No, I think it was handled by a judge, an actual judge,
18 county court judge.

19 Q So at page 18 of your deposition transcript again at
20 Exhibit 1 when I say to you at line 20 that was the decision
21 of an arbitrator, what was your answer?

22 A All right, --

23 Q Line 20, page 18.

24 A Please give me your question again.

25 Q At line 20, page 18 of your deposition --

1 A Hold on, I'm still back on 20 where you had me, page
2 18.

3 Q Line 20.

4 A Line 20.

5 Q I say to you was that the decision of an arbitrator,
6 what was your answer?

7 A "Yes, sir."

8 Q So we know that the county court matter that you say
9 dealt with a 10 day issue was not the decision of an
10 arbitrator, that was a judge. Correct?

11 A I believe so.

12 Q Were there any other cases that arose out of this
13 particular incident that dealt with a 10 day time period that
14 were the subject matter of a decision by an arbitrator?

15 A There were two.

16 Q Were there any other cases --

17 A Any other cases.

18 Q -- involving this particular incident --

19 A Okay.

20 Q -- that dealt with a 10 day time period that resulted
21 in the decision by an arbitrator?

22 A Sir, I apologize, but I don't know what the heck you're
23 getting at. I'm trying -- I want to give you a right answer
24 here, but you got me confused.

25 Q What I'm getting at is this, Mr. Brown, Exhibit 26,

1 which is a certain arbitration award, deals with a 10 day
2 situation.

3 A Yes, it does.

4 Q You were one of the parties to that matter. Correct?

5 A Yes, I was.

6 Q You prevailed in that case because the state police had
7 missed a time deadline.

8 MR. NEUHAUSER: Your Honor, I'm going to object at
9 this point, well beyond the scope of the Court's ruling on
10 this issue.

11 MR. LAPPAS: I'm simply trying to identify this in
12 such a way that the witness is compelled to admit that we're
13 dealing with the same thing.

14 THE COURT: I don't think you're getting there, Mr.
15 Lappas. I think he's explained his answer as best he can.
16 There is nowhere else to go with this. Let's move on.

17 MR. LAPPAS: All right.

18 BY MR. LAPPAS:

19 Q Now with respect to the events of February 4, 1999, do
20 you contend that Vicki Smith attacked you in any way?

21 A Yes.

22 Q At what point during these events do you contend that
23 she attacked you?

24 A Um, when we were on the ground, she kicked me. To be
25 honest with you, the only reason I know that is I watched the

1 video.

2 Q So your testimony is you did not know it when she
3 kicked you, but then you saw it in the video?

4 A She was hovering over us, and I went like this,
5 (Indicating) you know, trying to, as we were fighting, just
6 swinging so she would stay back, but as far as kicking me,
7 no, I had to watch the video for that.

8 Q Did you feel her kick you on the night of February 4?

9 A Sir, I was on the ground with a probably 200 pound man
10 on top of me. I was only interested in getting out from
11 under.

12 Q Is that a no?

13 A I would assume so, yes.

14 Q Turn to page 60 of Exhibit 2 in Binder 1. This is
15 another deposition.

16 A Binder 1?

17 Q Yes. Have you found that page?

18 A Yes, sir.

19 Q Now this was sworn testimony that you gave at a law
20 firm in Harrisburg on July 9, 2002. Is that correct?

21 A I cannot confirm the date, I don't have my date book
22 with me, but, yes, I did give testimony there.

23 Q Now on page 60 you describe the alleged kicking by
24 Vicki Smith, correct, starting at line 2 --

25 A Hold on, I got to get there. At line --

1 Q Two.

2 A Yes, sir.

3 Q Would you read how you describe that kicking incident.

4 MR. NEUHAUSER: Your Honor, I'm going to object.
5 This isn't proper cross examination. He's acknowledged
6 previous questioning. The answer that Mr. Lappas is seeking
7 now he's trying to introduce testimony that is not
8 inconsistent.

9 THE COURT: Sustained.

10 BY MR. LAPPAS:

11 Q You testified I believe earlier today that you do not
12 presently have a problem with violent mood swings. Is that
13 accurate?

14 A That's true, due to medication. Medication helps me.

15 Q But you will acknowledge, would you not, that you have
16 a great deal of anger?

17 A Yes.

18 Q That anger is at least in part directed to my client?

19 A Yes, for what I have been through, but I'm dealing with
20 it. I'm seeing a psychiatrist. I'm getting help.
21 Eventually I'll lay this down.

22 Q On February 4 when Vicki Smith first approached you,
23 your testimony is she was friendly and cordial towards you.
24 Correct?

25 A Yes, she was. She was overly friendly, touching me to

1 the point that it made me nervous, but I just figured she was
2 just a happy drunk.

3 Q She was pleading with you, was she not?

4 A At one point she was, yes, sir. I know she did not
5 want me to arrest him. She wanted me to release him to her.

6 Q And Randy, I'm sorry, Mr. Yordy, was also cordial and
7 friendly with you at the beginning according to your
8 testimony?

9 A Yes, sir. Yes, sir.

10 Q And this situation went from being cordial and friendly
11 to a situation where they both assaulted and attacked you.
12 Is that your testimony?

13 A Yes, sir, it is.

14 Q Now you acknowledged yesterday that you broke Randy
15 Yordy's nose with your first punch. Correct?

16 A Yes, sir, I did.

17 Q And will you acknowledge that you fell to the ground
18 hard enough to the side of the road to cause him to break his
19 arm?

20 A I don't know when that happened, sir, but we fell but
21 I'd say no because he hit me. I mean, I cushioned his blow,
22 he was on top of me. Maybe if he was on the bottom, I'd say
23 yes, but, no, I cannot say when it happened.

24 Q Please turn to your Deposition Exhibit No. 1. It's in
25 Binder 1, Exhibit 1.

1 A Yes, sir.

2 Q Page 71.

3 A Yes, sir.

4 Q The question that begins on line 23: "Did you do
5 anything during the course of this incident which could have,
6 in your judgment, resulted in a broken arm to him?" Do you
7 see that question?

8 A Uh-huh. Yes, sir.

9 Q And what was your answer at the top of page 72?

10 A "Yeah, we went down hard, and I landed on top of him."

11 Q You landed on top of him, keep going.

12 A "You know, like I said, we lost our footing, and 200
13 pounds came -- and 200 pounds coming down on you. And it was
14 all rock. It wasn't any -- it wasn't any dirt. It was all
15 gravel and rock in the area."

16 Q All right, now does that change your testimony as to
17 whether anything happened between you and him that could have
18 caused him to break his arm?

19 A It's possible, but I don't remember testifying --
20 saying that. I don't remember saying that I landed on top of
21 him because he landed on top of me.

22 Q Do you dispute the accuracy of this transcript?

23 A Yes, I may have misspoke. That's all I'm saying. I
24 may have misspoken.

25 Q You may have said the wrong thing?

1 A Yes.

2 Q But you're not saying this transcript is itself
3 incorrect?

4 A Oh, no, I'm human, I make mistakes.

5 Q When you said: "You know, like I said, we lost our
6 footing, and 200 pounds coming down on you," you were
7 referring to your weight, 200 pounds coming down on Randy
8 Yordy.

9 A No, I was referring to him. He was a pretty strong,
10 pretty stocky man.

11 Q So when you said, "... I landed on top of him. You
12 know, ... 200 pounds coming down on you."

13 A I weighed 180 pounds at the time. I now weigh 200. At
14 the time I weighed 180.

15 Q During your interview with Corporal Mrgich did you tell
16 him when you were on the ground with Randy Yordy you
17 threatened to blow his head off?

18 A I don't recall. Do you have that? May I read that?

19 Q It is Attachment 10. To read it, Mr. Brown, you're
20 going to need Plaintiff's Exhibit Binder 3.

21 A Got it.

22 Q You're going to need to turn to Exhibit 11.

23 A Got it.

24 Q And you're going to need to find Attachment 10. Each
25 of the attachments is numbered at the bottom right-hand

1 corner.

2 A I have Attachment 10 but it's this. (Indicating.)

3 Q Perhaps we're not looking at the same document.

4 A Binder 3.

5 Q What you're looking at is Attachment 2.

6 A Oh, I'm sorry, I just saw the numbers on the bottom.

7 Okay.

8 Q Have you got the right exhibit?

9 A Thank you. Calm down, you're under arrest, stop
10 fighting me. It doesn't appear so.

11 Q All right, one final point. I want you to turn to
12 Binder No. 3, Exhibit No. 3, I'm sorry, Exhibit No. 13,
13 Binder No. 3.

14 A Oh, that's more like it. Penn State Geisinger?

15 Q Yes.

16 A Okay. Do you want me to keep my hand on the other one?

17 Q Not necessary. Approximately the third or maybe fourth
18 page there is a document called Emergency Department Note.
19 Date of February 4, 1999.

20 A Okay.

21 Q Have you found that?

22 A Yes, I found that.

23 Q The second paragraph of that note indicates, quoting,
24 "The patient's medications are Prozac." Do you see that?

25 A Yes, sir. I told you I don't recall anything about the

1 hospital. I had previously been on Prozac because, well,
2 quite frankly, my daughter is disabled. She was born that
3 way. I had a hard time dealing with it.

4 Q Well, this note relates to information that the
5 hospital personnel received on February 4, 1999. Did you
6 tell them that or did you not?

7 A I don't recall anything that happened in the hospital.
8 They could have pulled it from my records, I don't know.

9 Q Was your wife with you at the hospital?

10 A Nobody was with me.

11 Q Well, you told us earlier today that your wife would
12 have better information.

13 A Yes, she would have the time frames of when I was, when
14 I was taking them.

15 Q She was not at the hospital to advise the doctor, the
16 personnel, of your Prozac taking?

17 A No, no.

18 MR. LAPPAS: Thank you. I have no further
19 questions of this witness.

20 THE COURT: Thank you. Mr. Neuhauser.

21 MR. NEUHAUSER: May I have a moment, Your Honor?

22 THE COURT: Please.

23 (Pause.)

24 MR. NEUHAUSER: I have no redirect, Your Honor.

25 THE COURT: All right, thank you.

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Trooper, thank you. You may step down.

THE WITNESS: Thank you.

(The testimony of Scott Allen Brown concluded.)

I hereby certify that the proceedings and evidence of the court are contained fully and accurately in the notes taken by me on the testimony of Scott Allen Brown from the jury trial of the within cause and that this is a correct transcript of the same.

Monica L. Zamiska

Monica L. Zamiska, RPR

Official Court Reporter